

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-091454

12/06/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

EILEEN M PRIEST

DALE E WHITING

v.

AUDREY WEISS

DAVID L CHRISTENSEN

CHANDLER JUSTICE COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since oral argument on October 16, 2002, and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

In the case at hand, Appellee brought an action in Chandler Justice Court seeking \$9,500.00 from her sister, Appellant. Appellant, in the self-appointed capacity of administrator of her deceased mother's estate, withheld two (2) bank accounts from the estate, asserting that the accounts had belonged to her (Appellant) and her deceased mother, with right of survivorship. Appellee maintains that the two accounts equal nearly \$20,000.00 and that she is entitled to half. Appellant brings the matter before this court claiming that the Chandler Justice Court did not have subject matter jurisdiction over the action.

The first issue to be addressed is whether a justice court, not being a court of general jurisdiction, may hear a probate matter, a cause of action arising out from a disputed estate. The first duty of any court is to determine whether it has jurisdiction in the premises, and in so

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-091454

12/06/2002

determining, it must act judiciously.¹ The test of jurisdiction is whether the court has power to enter upon the inquiry, and jurisdiction of the subject matter is the power to deal with the general abstract question, to hear particular facts in any case relating to such question, and to determine whether or not they are sufficient to invoke the exercise of that power.²

It is well settled that justice courts have narrowly-restricted power and jurisdiction,³ and this jurisdiction exists only to the extent conferred by the State Constitution and statutes.⁴ Not even the parties themselves can stipulate to jurisdiction that a court does not otherwise have.⁵ Article VI, section 32(B,C) of the Arizona Constitution states:

- B. The jurisdiction, powers and duties of courts inferior to the superior court and of justice courts, and the terms of office of judges of such courts and justices of the peace **shall be as provided by law.** The legislature may classify counties and precincts for the purpose of fixing salaries of judges of courts inferior to the superior court and of justices of the peace.
- C. The civil jurisdiction of courts inferior to the superior court and of justice courts shall not exceed the sum of ten thousand dollars, exclusive of interest and costs. Criminal jurisdiction shall be limited to misdemeanors. **The jurisdiction of such courts shall not encroach upon the jurisdiction of courts of record but may be made concurrent therewith, subject to the limitations provided in this section.**

Arizona case law clearly states that only the Superior Court has jurisdiction over probate matters. Article VI, section 14 of the Arizona Constitution reads in part:

¹ *State v. Phelps*, 67 Ariz. 215, 193 P.2d 921 (1948).

² *Arizona Public Service Co. v. Southern Union Gas Co.*, 76 Ariz. 373, 265 P.2d 435 (1954); also see *Van Ness v. Superior Court of State in and for Maricopa County*, 69 Ariz. 362, 213 P.2d 899 (1950) (holding that a court must have jurisdiction of the subject matter of the case, jurisdiction of the persons involved in the litigation, and jurisdiction to render the particular judgment given).

³ *Dunlap v. Superior Court, In and For County of Maricopa*, 169 Ariz. 82, 817 P.2d 27 (Ariz. 1991).; also see A.R.S. § 1-215(13).

⁴ *State ex rel. Milstead v. Melvin*, 140 Ariz. 402, 682 P.2d 407 (Ariz. 1984); also see *State v. Hicks*, 69 Ariz. 208, 211 P.2d 473 (Ariz. 1949); A.R.S. Const. Art. 6, §32; A.R.S. §22-201; A.R.S. Const. Art. 6, §9.

⁵ *Southwest Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, 36 P.3d 1208 (App. 2001).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-091454

12/06/2002

The **superior court** shall have original jurisdiction of:

1. Cases and proceedings in which exclusive jurisdiction is **not vested by law in another court**.

. . .

8. **Matters of probate.**

By enacting the Probate Code, “the Legislature intended to confer upon the **Superior Court** sitting in probate its full constitutional jurisdiction in matters which might arise affecting estates.”⁶ *Vargas v. Greer*⁷ provides that probate proceedings are purely statutory, and the **Superior Court**, although a court of general jurisdiction, is circumscribed in this class of proceedings by the provision of the statute conferring such jurisdiction.”⁸

The constitutional creation of the **Superior Court** with original jurisdiction over all cases of law, equity, **and probate** did not thereby abolish the different remedies which previously existed under the common law, equity, and the statutes of probate, but merely created a single court with jurisdiction to determine all questions of law and fact necessary for a proper judgment.⁹ Clearly, the justice courts lack authority to hear any probate matter. Therefore, the Chandler Justice Court erred by hearing this case, and should have granted Appellant’s motion to dismiss.

The second issue on appeal is whether the default judgment entered by the Chandler Justice Court should be vacated due to the judgment being void *ab initio* for a lack of subject matter jurisdiction. A judgment may be attacked as void upon its face for lack of jurisdiction of the subject matter.¹⁰ If a judgment is void, the trial court has no discretion but to vacate the judgment.¹¹ Consequently, the default judgment entered by the Chandler Justice Court must be set aside.

Appellant’s final issue is whether she is entitled to attorney’s fees and costs. Appellant alleges that Appellee knew that her claim was frivolous, was made in bad faith, and was

⁶ *Gonzalez v. Superior Court, In and For Pima County*, 117 Ariz. 64, 66, 570 P.2d 1077, 1079 (Ariz. 1977); Also see A.R.S. §§ 14-1102 et seq., 14-1302, 14-3105; A.R.S. Const. Art. 6, § 14.

⁷ 60 Ariz. 110, 131 P.2d 818 (Ariz. 1942).

⁸ *Id* at 117, 131 P.2d at 821.

⁹ *Sanders v. Sanders*, 52 Ariz. 156, 79 P.2d 523 (1938).

¹⁰ *Matter of Adoption of Hadtrath*, 121 Ariz. 606, 592 P.2d 1262 (Ariz. 1979).

¹¹ *Martin v. Martin*, 182 Ariz. 11, 893 P.2d 11 (Ariz.App. 1994); See Ariz. R. Civ.Proc., 60(c)(4).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-091454

12/06/2002

designed to harass, therefore entitling Appellant to attorney's fees and costs pursuant to A.R.S §12-341.01(C). After a careful examination of the record, I find nothing to support this claim.

IT IS ORDERED denying Appellant's request for attorneys' fees and costs.

IT IS FURTHER ORDERED reversing the decision of the Chandler Justice Court, and vacating the judgment against Appellant.

IT IS FURTHER ORDERED remanding this matter back to the Chandler Justice Court, with instructions to dismiss the case entirely.